

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

## **CIVIL CASE NO. 3:06cv66**

**THIS MATTER** is before the Court on the Defendants' Motion for Further 12-Hour Extension of Time to Respond to Plaintiff's Motion for Partial Summary Judgment [Doc. 170]; Defendants' Cross-Motion for Partial Summary Judgment [Doc. 172]; and Plaintiff's Consented Motion for Extension of Time in Which to Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment and Respond to Defendants' Cross-Motion for Summary Judgment [Doc. 173].

The Defendants filed a motion, seeking a 12-hour extension of time to file their response to the Plaintiff's motion for partial summary judgment.

For the reasons stated in the motion, and for cause shown, the Defendants' motion will be allowed.

In conjunction with filing their response, the Defendants also filed a cross-motion for summary judgment. The Court finds that this motion is untimely, and the motion therefore will be stricken.<sup>1</sup>

Finally, the Plaintiff seeks an extension of time, until December 21, 2007, in which to reply to the Defendants' response to Plaintiffs' motion for partial summary judgment and to respond to the Defendants' cross-motion for summary judgment. As the Defendants' cross-motion for summary judgment has been stricken, the Plaintiff's request for an extension of time to respond to such motion is moot. With respect to the Plaintiff's request for an extension of time to file a reply to the Defendants' response, the Plaintiff's motion will be allowed, but only to the extent that the Plaintiff's reply is limited to new issues raised in the Defendants' response brief. Any

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<sup>1</sup>Summary judgment nevertheless may be rendered in favor of a non-moving party in the absence of a formal cross-motion "if it appears from the papers, affidavits and other proofs submitted by the parties that there are no disputed issues of material fact and that judgment for the non-moving party would be appropriate as a matter of law." Clark v. United States, 630 F. Supp. 101, 103 (D. Md. 1986) (quoting Calvert v. West Virginia Legal Services Plan, Inc., 464 F. Supp. 789, 791 (D. W. Va. 1979)); 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 2720 (3d ed. 1998).

reply brief Plaintiff may file is limited to seven (7) pages, double spaced and in 14 point type.

Further, the Court deems a motion ripe for determination upon the timely filing of the response. Accordingly, while the Plaintiff's motion for an extension of time to file a reply brief is allowed, the Plaintiff is encouraged to file such brief as soon as possible.

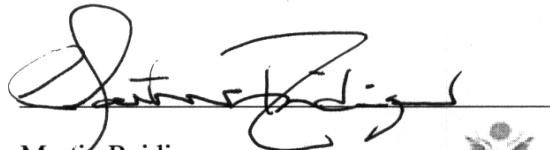
Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendants' Motion for Further 12-Hour Extension of Time to Respond to Plaintiff's Motion for Partial Summary Judgment Doc. 170] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Defendants' Cross-Motion for Partial Summary Judgment [Doc. 172] is **STRICKEN**.

**IT IS FURTHER ORDERED** that the Plaintiff's Consented Motion for Extension of Time in Which to Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment and Respond to Defendants' Cross-Motion for Summary Judgment [Doc. 173] is **GRANTED**, but only to the extent stated herein.

**IT IS SO ORDERED.**

Signed: November 28, 2007



Martin Reidinger  
United States District Judge

